

In The Matter Of:

Richard A. Adams

vs.

IBM Corp.

Deposition of Richard Adams

Date Taken: June 1, 2006

THOMPSON REPORTING SERVICES, INC.

Certified Court Reporters

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

RICHARD A. ADAMS,)
)
Plaintiff,)
) CIVIL ACTION FILE
vs.)
) NO.: 1:05-CV-3308-TWT
IBM CORP.,)
)
Defendant.)

- - -

Deposition of RICHARD A. ADAMS, taken
on behalf of the Defendant, pursuant to the
stipulations agreed to herein before Michelle J.
Fuller, Certified Court Reporter, at Jackson
Lewis LLP, 1900 Marquis One Tower, 245 Peachtree
Center Avenue, N.E., Atlanta, Georgia, on the 1st
day of June 2006, commencing at the hour of 9:46
a.m.

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1 APPEARANCES OF COUNSEL:

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9 - - -

10 MR. MUNGER: Would you swear in the
11 witness, please.

12 RICHARD A. ADAMS,
13 being first duly sworn, was examined and deposed as
14 follows:

15 CROSS-EXAMINATION

16 BY MR. MUNGER:

17 Q Good morning, Mr. Adams.

18 A Good morning.

19 Q My name is Steve Munger. I think we've met
20 before.

21 A Right.

22 Q And I represent IBM, and I'll be taking your
23 deposition this morning. Have you ever given a
24 deposition before?

25 A No.

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1 Q Okay.

2 A That I know of.

3 Q Let me tell you how the process is going to
4 work. I'll be asking all the questions today. And if
5 you don't understand my question, please let me know,
6 and I will try to rephrase it --

7 A Okay.

8 Q -- so that you understand the question. Also,
9 it's going to be important for you to verbalize your
10 responses rather than nodding your head so that the
11 reporter can transcribe the testimony.

12 A Right.

13 Q If at any time you want to take a break, we can
14 do so. I would ask that if there's a question pending
15 and you want a break, please answer the question first,
16 and then we'll take a break.

17 I notice you brought some notes and documents
18 with you. That's fine. What I would like to do is ask
19 you the question and if you can answer it without
20 referring to your notes, please do so.

21 A Okay.

22 Q If you feel you need to refer to your notes,
23 that's fine, but I will be entitled to see any notes
24 that you're looking at.

25 A Okay.

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1 Q Okay. Any questions then about the process?

2 A No.

3 Q All right. Then let's begin.

4 Would you state your full name for the record,
5 please.

6 A Richard Allen Adams.

7 Q And where do you currently reside, Mr. Adams?

8 A 2401 Winshire, W-i-n-s-h-i-r-e, Drive, Decatur,
9 Georgia 30035.

10 Q Are you currently employed?

11 A No.

12 Q Are you retired?

13 A I am.

14 Q To the best of your knowledge, have you now
15 provided us with any documents that you have that we
16 have requested in this case?

17 A I have that I have found. There was two
18 documents y'all asked for I could not find.

19 Q Okay. Okay. When did you first begin working
20 for IBM?

21 A November the 7th, 1956.

22 Q And when you were first hired, what was your
23 position at the company?

24 A Service representative technician.

25 Q And when was the last day you worked for IBM?

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1 A May the 31st, 2003. That's when I retired.
2 That was on Saturday, so I don't know if that was the
3 last date. But I retired on May the 31st, 2003.

4 Q Okay. And what was your position at IBM at the
5 time?

6 A My position was -- I guess I worked on the help
7 desk.

8 Q Other than being a service rep tech and working
9 on the help desk, did you hold other positions at IBM?

10 A No.

11 Q Where did you work for IBM?

12 A Physical?

13 Q Yes.

14 A It was over off Johnson's Ferry Road close to
15 the river. I don't know the address of the building. I
16 didn't bring it.

17 Q Okay. And what is your date of birth?

18 A September the 29th, 1935.

19 Q Okay. I have a number of documents that I'm
20 going to introduce today that I have questions for you
21 about. Let's just start with the original complaint
22 that you filed. What I'm going to be doing is asking
23 the reporter to mark the documents. Then I'm going to
24 show it to you so you have a copy in front of you when I
25 ask you questions about it. Okay?

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1 A Sure.

2 (Defendant's Exhibit No. 1 was marked.)

3 BY MR. MUNGER:

4 Q Okay. I'm handing you what's been marked as
5 Exhibit No. 1. And let me ask you, is that a copy of
6 the claim that you filed in magistrate court in this
7 case?

8 A In DeKalb County, right.

9 Q Okay. And it looks like you filed this claim
10 in magistrate's court on December 2 of 2005, is that
11 correct, looking at the date on the side here, sir, date
12 filed?

13 A Correct. Correct.

14 Q And the handwritten notation under paragraph 2,
15 is that your handwriting?

16 A It is.

17 Q Okay. I'm going to read it aloud, and you tell
18 me if I've got it right. Okay. Plaintiff says the
19 defendant is indebted to the plaintiff as follows: I
20 did not receive interest on the money that Plaintiff had
21 of \$151,000. I received a letter dated April 16, 2005,
22 from Defendant that stated if you elect a lump sum, the
23 amount of your lump sum will be larger the longer you
24 wait to receive your benefit. I waited 26 months. And
25 then it reads that said claim is in the amount of

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1 \$15,000, and then you signed it.

2 Did I read that right?

3 A Correct.

4 Q Okay. And you are not represented by counsel
5 in this matter; correct?

6 A That's true.

7 Q Okay. Now, at some point in time after you
8 filed that claim in magistrate court, you learned that
9 IBM had removed the case to federal court; correct?

10 A Yes.

11 Q Okay. And at that point, you were introduced
12 to our law firm, and in particular I believe you worked
13 with Mr. Owen Hill?

14 A Yes.

15 (Defendant's Exhibit No. 2 was marked.)

16 BY MR. MUNGER:

17 Q Okay. I'm going to hand you what's been marked
18 as Defendant's Exhibit No. 2. This is a copy of a
19 document that both parties were required to prepare.

20 MR. MUNGER: For the record, it's the joint
21 preliminary report and discovery plan for the
22 case after it was removed to the United States
23 District Court for the Northern District of
24 Georgia; The Civil Action File No.,
25 1:05-CV-3308-TWT.

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1 BY MR. MUNGER:

2 Q Do you recognize this document?

3 A Yes, I do.

4 Q Okay. And are the handwritten notations
5 contained in the document yours?

6 A Yes.

7 Q Okay. And just so I understand your
8 handwriting once again, on the first page of the
9 exhibit, under the description of the case, paragraph
10 1A, you were asked to describe briefly the nature of the
11 action for the plaintiff. You have written: I am
12 seeking redress for not receiving interest on
13 \$151,349.10 that IBM pension plan, parens, quote, plan,
14 closed quote, close parens, had under its control for 27
15 months after I retired. I am asking for damages more
16 than \$15,000.

17 Did I read that correct, sir?

18 A Correct.

19 Q Okay. And turn to the page. Once again,
20 there's another handwritten notation. This would be
21 under paragraph 1B which is at the bottom of the first
22 page reads: Summarize in the space provided below the
23 facts of this case. This summary should not be
24 argumentative or recite evidence for the plaintiff.

25 You have written: I did not receive interest

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1 on \$151,349.10 that the, quote, plan, end quote, had
2 control over June 1 of 2003 until about September 15 of
3 2005.

4 Did I read that correctly?

5 A Correct.

6 Q Okay. So if I understand from the two
7 exhibits, the claim that you are filing in this case is
8 for the interest on the \$151,349.10 from the IBM pension
9 plan?

10 A Correct.

11 Q Okay.

12 (Defendant's Exhibit No. 3 was marked.)

13 BY MR. MUNGER:

14 Q I've marked as Exhibit No. 3 the scheduling
15 order that was issued by Judge Thrash in this case after
16 the parties submitted the joint preliminary planning
17 report.

18 Do you recognize that document, sir?

19 A Yes.

20 Q Did you receive a copy of it from the Court?

21 A I believe so.

22 (Defendant's Exhibit No. 4 was marked.)

23 BY MR. MUNGER:

24 Q I'm now handing you the finalized version of
25 the joint preliminary planning report and discovery plan

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1 that I believe our office prepared after receiving your
2 input and that was filed with the court.

3 Do you recognize that document?

4 A Yes.

5 Q Okay. Is that a copy of the document you
6 received that was filed as the joint preliminary
7 planning report and discovery plan in this case?

8 A Yes.

9 Q Okay. Thank you.

10 As you can tell, sir, there's been a lot of
11 correspondence in this case.

12 A I know I had a lot of correspondence with the
13 pension people over five or six years.

14 Q Mr. Adams, during the time that you were
15 employed by IBM, did you have access to the IBM personal
16 pension plan document?

17 A Some.

18 Q Okay. Did you have access to the summary plan
19 description?

20 A Of what year or which one? I have some of
21 them.

22 MR. MUNGER: All right. Let me go ahead
23 and mark this as Exhibit 5.

24 (Defendant's Exhibit No. 5 was marked.)

25 BY MR. MUNGER:

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1 Q This is, by the way, a document that you
2 produced to us. Is that a copy of a summary plan
3 description that IBM provided to you?

4 A I assume, right.

5 Q Okay. Were you told that this document also
6 applied at the time that you retired in May of 2003?

7 A No.

8 Q Do you recall having telephone conversations
9 with people at the employee services center where they
10 informed you that any provisions that were in the plan
11 in 19 -- I'm sorry -- in 2003 would also be contained in
12 the more revised plans?

13 A No. I don't believe I was ever told anything
14 about this.

15 Q You don't recall someone at the employee
16 services center telling you that the terms of the
17 summary plan description that were in effect in 1993 are
18 contained in that document?

19 A In 1993?

20 Q Yes.

21 A No. I didn't talk to that many people after
22 January the 1st of '05. I may have had correspondence
23 with them through letters since then, I believe.

24 MR. MUNGER: Let's go off the record for a
25 minute.

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1 (Off the record from 10:06 a.m. through 10:11 a.m.)

2 (Defendant's Exhibit No. 6 was marked.)

3 BY MR. MUNGER:

4 Q I'm just trying to refresh your memory, sir. I
5 know you had a number of conversations with people at
6 the employee services center about your pension.

7 A Right.

8 Q And those conversations were recorded. Did you
9 know that?

10 A I understood that they should have been.

11 Q Yeah. And I have transcripts of conversations
12 that you had at various times.

13 A Okay.

14 Q And that's what I'm showing you right now.

15 A Okay.

16 Q Okay.

17 A This is with Kathy.

18 Q Yes.

19 MR. MUNGER: And for the record, the
20 document is entitled Jackson Lewis, LLP,
21 IBM/Adams calls to employee services center,
22 40134/88385, 4 of 4.

23 BY MR. MUNGER:

24 Q And do you recall having this conversation with
25 Kathy, sir?

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1 A I had some conversations with Kathy.

2 Q Okay. All right. On the bottom of this page,
3 let me -- let me go one, two, three, four, five, it
4 looks like six lines up, Kathy -- you see where it says
5 Kathy says: Okay, and what can I help with you this
6 morning?

7 A Right.

8 Q And you say: I would like to get y'all to send
9 me a summary plan description?

10 A Right.

11 Q She responds: Okay, and for what benefits,
12 sir. You say: For my retirement and I'd like it for
13 the year 1993; that's when I retired for the first time.

14 A Right.

15 Q She says: Now, the summary plan document for
16 the pension plan. You say: Uh-huh. She says: Okay;
17 that's all -- I mean, it's all inclusive; it has '93
18 information as well as anything current. And you say:
19 Yeah, but I just want -- particularly I need '93 because
20 that's when I retired the first time, and I have some
21 arguments -- and the transcriber couldn't detect the
22 next word -- my pension about what it was when I
23 retired; will it go back that far; do you know. I mean,
24 yeah, this is a legal ruling document for the pension.
25 Right. Yes, sir. For 19 -- and her response is: I

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1 mean it has all the rules and regulations on the
2 pension, yes, sir.

3 And you asked: And for '93 when I first
4 retired; I don't want the one for now. And she said:
5 Well, that's what I'm trying to explain to you; every
6 year when there's updates, changes in the pension, we
7 have to make a new plan document. Okay. Right.
8 So every plan document, we only have, of course, the
9 most recent one, but it is all inclusive. So it is
10 going to include information, okay, on the pension plan
11 regardless of when you left.

12 Does that refresh your memory, sir?

13 A Right.

14 Q Okay. So you were told that the summary plan
15 description that I just handed to you contained all of
16 the terms that were in place in 1993?

17 A According to this, that's true.

18 Q Okay. All right. I'm just trying to refresh
19 your memory. I know you had a lot of conversations.

20 A I don't know. When was this conversation made?
21 It doesn't have a date on it.

22 Q It doesn't have a date on it.

23 A I don't think I talked to her since this came
24 out.

25 Q Okay.

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1 A In the last -- in the last two years. I think
2 it was many years ago that I talked to Kathy.

3 Q Well, it had to be after '03. You had already
4 retired.

5 A Right.

6 Q Okay?

7 A Okay.

8 Q But you recall having this conversation?

9 A Right. I particularly wanted the rules for
10 '93, which I found and y'all have a copy of.

11 Q And this document you have in front of you
12 contains those rules, doesn't it?

13 A Correct.

14 Q Okay.

15 A It doesn't contain all of them --

16 Q Okay.

17 A -- that was in the '93. It contains some of
18 them.

19 Q All right. Well, let's look at the summary
20 plan description for a moment that you were provided.

21 A This one (indicating)?

22 Q Yes, sir. What exhibit number is that?

23 A No. 5.

24 Q Okay. Now, you were told by IBM that these
25 terms applied in 1993. We just -- we just discerned

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1 that from the transcript; correct?

2 A Right.

3 Q Okay. Now, when you retired on May 31 of 2003,
4 how old were you?

5 A I must have been 60 --

6 Q 7?

7 A 67. Or nearly 68. I was born September, so 67
8 and nine months.

9 Q Okay. I'd like to direct your attention to
10 page 22 of the summary plan description for the personal
11 pension plan.

12 A Okay.

13 Q Okay. On page 22, there is a section that is
14 1.6.8.1, treatment at age 65?

15 A Right.

16 Q Okay. It reads: If you do not take a
17 distribution by your 65th birthday, your account balance
18 will not receive any interest credits beyond age 65.
19 Did you know that, sir?

20 A That couldn't true.

21 Q Did you know that that was in the summary plan
22 description?

23 A No; because I got this after I retired. I did
24 not have this when I retired.

25 Q I understand that. But you had this before you

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1 commenced your benefits?

2 A No, I commenced my -- I got my in -- a year
3 ago.

4 Q I understand that. But you received this from
5 IBM prior to commencing your benefits? You commenced
6 your benefits last June; correct?

7 A Right.

8 Q Correct?

9 A Or September I think I got them.

10 Q Okay. But you received this prior to September
11 of 2005?

12 A I assume, yes.

13 Q Okay. All right. So according to the summary
14 plan description, after age 65, you cannot collect any
15 interest on your distribution; correct?

16 A But I did collect interest because I was still
17 working.

18 Q I understand.

19 A If you work there --

20 Q Who were you working for when you --

21 A IBM Corporation.

22 Q Was that when you were with TSS?

23 A No, I worked for IBM.

24 Q Wasn't there a period of time when you left IBM
25 and then were rehired?

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1 A Right.

2 Q Okay. When did you leave IBM the first --

3 A According to them.

4 Q When did you leave IBM the first time?

5 A I retired in 1993, September the 30th.

6 Q Okay. When were you rehired?

7 A Well, I went to work the next day with a firm
8 called Amigo, which was a joint venture between IBM and
9 Kodak. But I had the same IBM customers, the same IBM
10 management. We worked out of an IBM building.

11 Q Who paid you?

12 A Amigo.

13 Q So you were on Amigo's payroll?

14 A Correct.

15 Q Okay.

16 A Which was a joint venture, so they said.

17 Q Now, when you went to work for Amigo, did you
18 have different benefits?

19 A I had no benefits.

20 Q You had no benefits?

21 A I guess other than workmen's compensation.

22 Q Were you given credit for your years at Amigo
23 towards your retirement?

24 A Not that I know of.

25 Q All right. So you were at least treated like a

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1 separate employee then?

2 A Correct.

3 Q In terms of pay, benefits, and everything else?

4 A I had no benefits, but I had my IBM retirement
5 benefits. I didn't need their benefits.

6 Q And you were vested in your IBM retirement
7 benefits?

8 A I was. I had 37 years.

9 Q All right. Well, in 1993, how old were you?

10 A 57. 58. I guess I was 58.

11 Q All right. So you were not 65 when you retired
12 from IBM?

13 A No.

14 Q You were 57?

15 A 58. I was 58 that year.

16 Q And you were 65 when you were working at Amigo?

17 A No. I only worked there one year.

18 Q Oh, one year. Okay. So you worked there in
19 1994?

20 A Correct.

21 Q And what happened after that?

22 A They formed TSS. IBM formed TSS.

23 Q Was that another joint venture?

24 A (Indicating).

25 Q Okay. So you were rehired by IBM?

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1 A They said TSS was not IBM. That says it
2 is (indicating). I had that running argument with them
3 also.

4 Q Okay.

5 A I can't get them to say.

6 Q All right. When you went to work for TSS, did
7 you have any benefits?

8 A I had vacation.

9 Q Were your benefits at TSS different than your
10 benefits were at IBM?

11 A I did not have any benefits at TSS per se.

12 Q Okay.

13 A I had my IBM retirement benefits. I didn't
14 need them. I assumed they were the same, that they
15 would overlap.

16 Q Who paid you, TSS?

17 A Right.

18 Q So you were on TSS's payroll?

19 A Correct.

20 Q Okay. And you were not receiving any benefits?

21 A I received my IBM pension benefits.

22 Q Okay. And was that because you were vested?

23 A Because I was retired from IBM.

24 Q So while you were working for TSS, you were
25 retired from IBM?

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1 A Yes.

2 Q Okay.

3 A The first time.

4 Q Right. What pension benefits were you
5 receiving from IBM while you were working at TSS?

6 A Well, you mean the amount of money?

7 Q Do you recall? Was it a monthly pension
8 benefit?

9 A About \$1900.

10 Q Okay.

11 A A little over.

12 Q All right. So you didn't get any credit for
13 your service at TSS towards your pension benefit?

14 A No.

15 Q And how long were you at TSS?

16 A Until January the 1st of 1999 when IBM took TSS
17 back.

18 Q All right. And were you then rehired by IBM?

19 A I assume that's what they called it.

20 Q Well, did you continue to work for TSS after --

21 A No, I got IBM checks.

22 Q Okay.

23 A According to that.

24 Q And you stayed with IBM until you retired on
25 May 31st of 2003?

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1 A Correct.

2 Q Okay. So if I have it right, you went from
3 IBM -- you retired from IBM, went to Amigo for a year,
4 and then went to TSS?

5 A Correct.

6 Q And then back to IBM?

7 A Correct.

8 Q Okay. Okay. So where were you working when
9 you turned 65?

10 A At IBM.

11 Q The second time?

12 A (Witness nods head.)

13 Q Is that a yes?

14 A Yes.

15 Q Okay. Thank you.

16 And then you retired approximately two years
17 later after your 65th birthday?

18 A No.

19 Q I think you said you were 67?

20 A I know, but from '99, 2000, 2001, 2002, it
21 would be about four and a half years.

22 Q In other words --

23 A After I went --

24 Q -- from the time you were rehired at IBM until
25 you retired was about four and a half years?

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1 A Right.

2 Q Okay. All right. Back to my original
3 question: How do you know that you received interest on
4 your distribution after the age of 65?

5 A You mean how do I know that I should?

6 Q No. How do you know that you did? Do you know
7 whether you did?

8 A I received it every month.

9 Q Okay. When you --

10 A On my salary.

11 Q Okay. I'm not sure I understand what that
12 means.

13 A Well, on the new pension plan, I got 5 percent
14 of my salary every month.

15 Q Five percent of your salary you mean was
16 contributed into the plan?

17 A (Witness nods head.)

18 Q Okay. That's a different question.

19 A All right. Plus, I got interest pay credits.

20 Q For what?

21 A For each month.

22 Q Into what?

23 A In the pension plan.

24 Q Do you know how much the interest credits were?

25 A It varied every year.

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1 Q When did those interest credits stop?

2 A That's what my argument is. They shouldn't
3 have stopped. They stopped May 31st, 2003.

4 Q When you separated from IBM?

5 A Correct. Of course, see this thing that you
6 gave me says that I should have got them. Turn back to
7 page 21.

8 Q Well, 22 says after 65 you don't get any more
9 interest?

10 A All right. But what does that say
11 (indicating)?

12 Q Okay. Now you're referring me to what?

13 A Page 21, same document.

14 Q I understand, but what paragraph, sir?

15 A 1.5 -- 1.6.5.

16 Q Okay. If you leave IBM with vested benefits,
17 you may elect to defer all or part of your payment until
18 a later date but no later than the first day of the
19 month following your 65th birthday.

20 A Read the next one.

21 Q You didn't do that, did you?

22 A I was still employed, employed with IBM. I was
23 not eligible. Read the next paragraph.

24 Q If you elect to defer part of your benefit,
25 your next election must be to take your remaining

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1 account balance either as a lump sum or an as annuity.

2 A No, the next paragraph, not -- the one right
3 under 1.6.5. It says: The portion of your account
4 balance that you defer will remain in the plan and
5 continue to earn interest credits each month until your
6 account balance is distributed in its entirety.

7 Q Okay. But to defer, you have to commence your
8 benefit, and you didn't do that. And they told you
9 that's why you didn't get your interest, didn't they?

10 A No, I don't know why -- I don't think they told
11 me why I didn't.

12 Q You got three letters from Mr. Morrissey
13 explaining why you didn't get your interest.

14 A That's true.

15 Q And what he said was you didn't process the
16 paperwork --

17 A I didn't --

18 Q -- to elect the benefit?

19 A But that does not say I have to process the
20 paperwork.

21 Q Okay. And the reason you didn't do that is
22 because you were having a dispute with them about the
23 balance; correct?

24 A Correct.

25 Q And you also were concerned that if you

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1 commenced your lump sum benefit that it might affect
2 your rights under the class action in the Southern
3 District of Illinois?

4 A Correct.

5 Q So that's why you made a decision not to
6 commence your benefits --

7 A Correct.

8 Q -- at the time? Okay. That saves us a lot of
9 time.

10 Now, you were told through a series of letters
11 prior to commencing your lump sum benefit and going back
12 as early as August of 2004 that you would not be paid
13 interest on the lump sum because you had not filled out
14 the paperwork; correct?

15 A They told me I would not receive interest. I
16 don't know if they said because I had not filled out the
17 paperwork. They may have told me that.

18 Q Well, let me just -- I'm going to hand you a
19 series of letters that you gave us, but let's mark them
20 first.

21 (Defendant's Exhibits No. 7 and 8 were marked.)

22 BY MR. MUNGER:

23 Q Okay. Let me hand you what's marked as Exhibit
24 No. 7. This is in the same -- these are all the same
25 documents you produced to us. If you'll turn, for

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1 example, to the August 5, 2004, letter that you received
2 from Mr. Morrissey. On the second page, with respect to
3 your request for interest on your PPA balance, it says:
4 May 31, 2003, under plan provisions, you were required
5 to commence your benefit immediately after your
6 separation from IBM on May 31, 2003. I'm sorry. Sir,
7 do you see that?

8 A Wait a minute. I haven't gotten there.

9 Q Oh, it's early on in the document.

10 A Which document? November --

11 Q It is the letter --

12 A November 21?

13 Q August 5, 2004. It's at the very beginning of
14 the exhibit.

15 A Okay. August, the first one's '01.

16 Q Right, and the next one should be August 5 of
17 '04?

18 A Okay.

19 Q Okay. I was reading it from the top of the
20 second page.

21 A Okay.

22 Q With respect to your request for interest in
23 your PPA balance since May 31, 2003, under plan
24 provisions, you are required to commence your benefit
25 immediately after your separation from IBM on May 31,

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1 2003. Despite repeated requests that you complete the
2 necessary application for benefits, you have failed to
3 do so. The plan does not allow for interest credits on
4 your account balance after May 31, 2003, due to delayed
5 commencement because of your failure to take necessary
6 steps to start the benefit payments.

7 So you received that letter and that
8 explanation --

9 A Right.

10 Q -- on August 5 of 2004, which was a year before
11 you opted to elect your distribution as a lump sum;
12 correct?

13 A Right.

14 Q All right. And if you'll look, sir, to the
15 next letter dated October 7, 2004 --

16 A Correct. Okay.

17 Q -- if you'll turn to the second page, again,
18 the paragraph at the top: While reviewing your matter
19 with the pension services staff at the employee services
20 center, they have informed me that you still have not
21 elected distribution from the personal pension account.
22 As such, I want to remind you that you will need to
23 contact the center if you want to receive your benefit.
24 Under the PPA, you have many options, parens, annuity,
25 lump sum, et cetera, that you should carefully consider.

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1 As was indicated in my August 5, 2004, letter to you, we
2 informed you that you were required to commence your IBM
3 pension plan benefit immediately after your separation
4 on May 31, 2003. We must remind you once again that the
5 plan does not allow for interest credits on your PPA
6 account balance after May 31, 2003, due to delayed
7 commencement because of your failure to take the
8 necessary steps to start the benefit payments.

9 Do you recall receiving this letter as well?

10 A Yes.

11 Q Okay. So in October, once again, they told you
12 you had not yet elected your distribution and because
13 you had not filled out the paperwork to do so after your
14 separation that you will not be paid interest on your
15 PPA account balance; correct?

16 A (Witness nods head.)

17 Q Now, if you knew that at the time, why did you
18 wait almost another year to elect your distribution?

19 A Because I -- I got some mail that said that the
20 longer I waited the more I would get.

21 Q After receiving these letters? You're
22 referring to a letter that you got in April 2 -- April
23 18 of 2004; correct? Well, this is 2003.

24 A (Witness nods head.)

25 Q Is that not true?

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1 A I've got to square what -- what we're going by.

2 Q This is savings plan.

3 A That's it. That's what my money's in.

4 Q What does this have to do with PPA?

5 A It says that I have until I'm 70 and a half
6 before I have to take it, in the box that I've got
7 outlined.

8 Q Are you saying that the PPA is a savings plan?

9 A The PPA, right.

10 Q I thought the PPA was a retirement plan.

11 A It is, but they're all, the same money.

12 Q Well, there's a difference between a savings
13 plan and a pension plan.

14 A That's where my money is. That's where I
15 transferred the money to.

16 Q I'm not sure that I understand. Was there an
17 IBM savings plan in 2003?

18 A If that's what that says.

19 Q Okay. Was there also an IBM pension plan in
20 2003?

21 A Yeah, I assume there was. I was in it.

22 Q This doesn't pertain to the pension plan?

23 A What does that say?

24 Q It says IBM savings plan. It doesn't say
25 anything about a pension benefit or a retirement

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1 benefit.

2 A What does it say in the box that I've got
3 outlined?

4 Q It says: You may choose to delay commencement
5 of your benefits. But the benefits they're talking
6 about is the IBM savings plan.

7 A I've never been in an IBM savings plan.

8 Q Well, then I'm not sure why you even received
9 this. This has nothing to do with pension.

10 A The same thing I thought.

11 Q That's a savings plan.

12 A Well, that's -- okay. Read the bottom of that
13 page.

14 Q Okay. This is the April 18 letter that I was
15 referring to earlier?

16 A The bottom --

17 Q Let me get my copy for a moment so we both have
18 the same document in front of us. Yeah, there's an IBM
19 personal pension plan, and then there's a savings plan.
20 They're two different plans.

21 A Well, this is -- I received this from IBM.

22 Q Well, yeah, you also received documents at that
23 time regarding your pension plan and you've even
24 produced them for us.

25 A You can use that one. I know what that says.

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1 Q I mean, here's a whole series of June 2003
2 documents that you received regarding your account
3 balance and your PPA?

4 A Right. Right.

5 Q Okay. That was separate from any savings plan.
6 I know I've got it here, sir. Just give me a moment.

7 A Use that one. Like I said, I know you've got a
8 copy of it.

9 Q Yeah, I do too, but I wanted to introduce it
10 anyways. So let me see. It's probably over here. Why
11 don't you hold on to this one. It looks like your
12 original. I'll go ahead and have her make a copy.
13 Let me go ahead and hand you my copy of the same
14 document. Let's just make sure that Exhibit B is the
15 same as your document.

16 Is that a copy of a letter that you received on
17 April 18 of 2005?

18 A It is.

19 Q And it concerns IBM personal pension, the plan?

20 A Correct.

21 Q All right. Now, I believe you wanted to refer
22 me to the paragraph that begins at the bottom of the
23 first page of the exhibit, determining your distribution
24 date.

25 A Correct.

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1 Q Let me just go ahead and read that. Choosing
2 the date that you will begin to receive your pension
3 benefits is an important decision. If you elect a lump
4 sum, the amount of your lump sum will be larger the
5 longer you wait to receive your benefit. And then it
6 goes on to say: If you elect an annuity, generally, the
7 amount of your annuity payments will be larger the
8 longer you wait to begin receiving your benefit. Okay?

9 A Correct.

10 Q Now, let me direct your attention to the
11 paragraph above that.

12 A Okay.

13 Q That -- that reads: You may begin to receive
14 your pension benefit as of the first day of any month
15 after your separation from employment. You may also
16 elect to begin to receive a portion of your benefit as
17 of the first day of any month and the rest of your
18 benefit as of the first day of any subsequent month.
19 However, you may not begin to receive your benefit later
20 than the first day of the month following your 65th
21 birthday or if later following the date you separate
22 employment from IBM.

23 Do you understand what that means, sir?

24 A Correct.

25 Q Okay. Now, you did not elect to take a lump

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1 sum benefit either the first day of the month following
2 your 65th birthday or --

3 A I was not eligible at that time.

4 Q -- or following the date you separated your
5 employment from IBM, did you?

6 A No.

7 Q Okay. And did you understand from this letter
8 that in order to be eligible for the benefits you had to
9 elect your -- to commence your benefit following the
10 date of your separation of employment from IBM?

11 A No.

12 Q Okay. Do you understand that now after having
13 looked at that?

14 A I understand what it says. But what it says is
15 not what the same thing that the next paragraph says.

16 Q Well, they're addressing two different issues.

17 A All right.

18 Q One is addressing when you can receive your
19 distribution. The other is addressing when you have to
20 commence your benefit.

21 A I understand that.

22 Q Okay. You have to commence your benefit in
23 order to receive your distribution.

24 A Correct.

25 Q Okay. And this says whether it's lump sum or

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1 annuity you have to do it within a month following the
2 date you separate your employment from IBM, doesn't it?

3 A The eligibility information says that.

4 Q All right.

5 A But determining your distribution date does not
6 say that.

7 Q Now, did you ever ask for a copy of the actual
8 pension plan document when you worked at IBM?

9 A Probably.

10 Q Do you recall if you received it?

11 A I received several documents.

12 MR. MUNGER: Let's go ahead and mark this.

13 (Defendant's Exhibit No. 9 was marked.)

14 BY MR. MUNGER:

15 Q I'm going to go ahead and hand you a copy of
16 the actual pension plan document.

17 A Right. '95 I -- I received this.

18 Q Okay. Let me direct your attention to page 35.

19 A Okay.

20 Q Paragraph 12.1(a), benefit commencement date,
21 reads: Except as provided in 12.1(d), a participant
22 shall elect in accordance with Section 12.4 a benefit
23 commencement date or dates for his or her retirement
24 income that is the first day of any month between the
25 first day of the month next following the participant's

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1 termination of employment with IBM and its affiliates
2 and the first day of the month next following the latter
3 of the participant's termination of employment with IBM
4 and its affiliates and the participant's normal
5 retirement date.

6 Now, when you retired in May 31st, 2003, you
7 were beyond the normal retirement date. You were 67
8 years old.

9 A I was.

10 Q Okay. So according to the pension plan itself
11 then, you had to elect your benefit by the first day of
12 the month following your termination of your employment,
13 didn't you?

14 A Correct.

15 Q And you didn't do that, did you?

16 A I did not.

17 Q Okay. In fact, you didn't do that until
18 September of 2005; correct?

19 A Correct; August or September. I don't remember
20 the exact date, but I --

21 Q Okay.

22 A I got the money about the middle of September.

23 Q Just so the record's clear, you made a
24 conscious decision not to commence your benefit within a
25 month of your retirement because you were disputing the

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1 amount of your balance with IBM?

2 A Partly, yes.

3 Q And because you wanted to find out how your
4 benefits might be affected by the outcome of the class
5 action?

6 A Not the class action. I don't think that would
7 affect my benefits here.

8 Q Okay. Well, did that -- did the class action
9 factor in any way into your decision as to when you were
10 going to commence your benefit?

11 A No.

12 Q Okay. All right. So it was simply a matter
13 of -- were you concerned that if you commenced the
14 benefit at the \$151,000 figure that you later could not
15 challenge that?

16 A Correct.

17 Q And is that why you waited?

18 A Correct.

19 Q So eventually, you just decided you couldn't
20 wait any longer?

21 A Well, I ran out of money.

22 Q All right. Fair enough.

23 Have you been paid that lump sum?

24 A I have.

25 Q Okay. In the amount of 151,000 --

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1 A 300, yeah, correct.

2 Q Okay. Okay.

3 (Defendant's Exhibit No. 10 was marked.)

4 BY MR. MUNGER:

5 Q I'm going to hand you a document that's been
6 marked as Exhibit No. 10. Is that a copy of a letter
7 that you received from Frank Holland concerning changes
8 in your PPA opening balance?

9 A Yes.

10 Q Okay.

11 (Defendant's Exhibit No. 11 was marked.)

12 BY MR. MUNGER:

13 Q I'm going to hand you another document dated
14 July 21, 2005. Do you recall receiving this document?

15 A Right.

16 Q And this concerns your decision to commence
17 your lump sum benefit apparently that you conveyed to
18 them by telephone?

19 A Correct.

20 Q Okay. It looks like it's dated July 21 of
21 2005?

22 A Right.

23 Q So did you call them on or before that date and
24 tell them that you wanted to commence your benefit?

25 A Correct.

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1 Q Okay. Most of the correspondence and most of
2 the telephone calls that you made concerned your
3 challenging the PPA balance; correct?

4 A Correct.

5 (Defendant's Exhibit No. 12 was marked.)

6 BY MR. MUNGER:

7 Q I'm going to hand you another letter that I
8 believe Mr. Morrissey sent you.

9 A Were we going to do anything with this letter?

10 Q It's already introduced. We're just going to
11 leave it. I didn't need to ask you any questions on it.

12 A Oh, no questions.

13 Q No. This is Exhibit No. 12.

14 A Okay.

15 Q Okay. Is this a copy of a letter that you
16 received from Mr. Morrissey on July 20th, 2005?

17 A It looks like it.

18 Q It looks like, once again, on the first page he
19 references his earlier letter on August 5 explaining to
20 you why you are not entitled to interest on your PPA
21 balance; correct?

22 A Correct. He just said I wouldn't get it. I
23 don't think he explained why.

24 Q Well, it says the plan does not allow --

25 A Right.

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1 Q -- for interest credits on your PPA balance
2 after May 31 since the delayed commencement is because
3 of your failure to take the necessary steps to start the
4 benefit payment.

5 A Correct.

6 Q That's the same reason he gave you in the two
7 prior letters; right?

8 A Right.

9 Q That suggests that had you commenced the
10 benefits within a month of your retirement that you
11 would have been paid interest?

12 A No, I wouldn't -- I would not. How would I
13 have been paid interest in if I had the money?

14 Q No. No. You wouldn't -- there's a difference
15 between commencing --

16 A Oh.

17 Q There's a difference between commencing the
18 benefit and distribution of the benefit.

19 A All right.

20 Q Okay. So my question to you is: What they
21 were telling you from these letters was if, according to
22 the pension plan, you had commenced your benefit, in
23 other words, elected to take the lump sum --

24 A Correct.

25 Q -- within a month of your termination in May of

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1 2003, okay, then you would have been able to get
2 interest credit on that lump sum up until the time you
3 took the distribution?

4 A Correct.

5 Q Okay. And the reason you weren't getting
6 interest is because you hadn't commenced the benefit?

7 A Correct. But did you read that?

8 Q Which --

9 A The last two --

10 Q The last two sentences?

11 A The last two sentences.

12 Q On the first page of the letter?

13 A Right.

14 Q The August 5, 2004, letter exhausted your
15 appeal process and --

16 A No. You're in July 20th of '05?

17 Q Yes.

18 A Where it says, however, if you decide to accept
19 your benefit in the form of an annuity, the annuity
20 payments will be retroactive to June the 1st.

21 Q You didn't select an annuity?

22 A No.

23 Q Okay. So that doesn't really have any --

24 A Why would they pay annuity and not pay
25 interest? I don't understand. I didn't understand why

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1 they would do that, do one but not the other.

2 Q Probably because of the way the plan is
3 written. I don't know.

4 A Oh, okay.

5 Q But you never opted for an annuity?

6 A No.

7 Q Okay.

8 A I wanted a lump sum.

9 Q The pension document you said you received,
10 sir, which is Exhibit No. 7?

11 A 9.

12 Q When did you receive that?

13 A I do not know.

14 Q Was that during your first or your second stint
15 with IBM?

16 A Probably the second. Well, it had to be -- it
17 was effective -- this was effective after my first
18 retirement.

19 Q Okay.

20 A My first retirement was in '93. This was
21 effective in '95.

22 Q So you think you received it sometime while you
23 were employed by IBM the second time?

24 A Yes; or maybe after I retired. I don't know
25 when I received it.

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1 Q But you received it before you elected to
2 commence your lump sum benefit?

3 A Yes.

4 Q Okay. Did you just overlook the language in
5 there that required you to commence your benefit within
6 a month after your termination?

7 A Yes.

8 Q Okay. Now, that you understand that that's
9 required under the plan, do you really want to continue
10 to pursue this case?

11 A Sure. Let me show you why.

12 Q Okay.

13 A B, that's the court order from Illinois judge.

14 Q Okay. Let me see what I'm looking at here,
15 sir.

16 A I assume you have a copy.

17 Q No. I'm not involved in this case.

18 A I know. But you have a -- I gave -- does it
19 have a check down at the bottom of the thing, lower
20 left-hand corner?

21 Q Yes, it does.

22 A I brought this in for y'all to have a copy of
23 it.

24 Q Okay. I'm not sure -- first of all, all this
25 appears to be is Judge Murphy's memorandum and order in

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1 the Cooper case pertaining to the factual background.
2 And if I'm reading the paragraph B of July 1 of 1999,
3 amendment -- I'll read it aloud.

4 Effective July 1, 1999, IBM -- IBM in managing
5 its plans create in its cash balance 41CBF. Under the
6 CBF, a participant's benefit is determined by reference
7 to a hypothetical account known as a personal pension
8 account. Every month a participant's PPA accumulates
9 pay credits at the rate of 5 percent of the employee's
10 salary -- that's what you were telling me about before
11 -- and interest credits at the rate of 1 percentage
12 point higher than the rate of return on one year
13 treasury securities. You also told me that.

14 A Of course that's changed since then because I
15 don't think that treasury note's available anymore.

16 Q When a participant's employment with IBM ends,
17 he may withdraw his account balance as a lump sum,
18 convert the account balance into an immediate life
19 annuity or defer the receipt of a lump sum payment or a
20 life annuity until a later date. While a former
21 employee is unable to earn additional pay credits, he
22 continues to accumulate interest credits until his PPA
23 balance is withdrawn or converted into a life annuity.

24 What does that have to do with commencing the
25 benefit?

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1 A It says that if I wait I will get interest
2 credit.

3 Q Assuming you commenced the benefit.

4 A Right.

5 Q You didn't commence the benefit?

6 A I know I didn't.

7 Q Well, there was no issue in this case over how
8 an employee elects to defer a lump sum payment. That's
9 the only issue in this case. You're absolutely right
10 that you had the right to defer the distribution of the
11 lump sum payment, but you had to elect that option
12 within a month of your termination if you wanted
13 interest. That's what the pension plan says.

14 A That's what this says?

15 Q Yes. Uh-huh. That's what I just showed you in
16 there.

17 A How could I elect it and defer it at the same
18 time?

19 Q All you had to do was fill out the paperwork
20 saying I want to take a lump sum and I want the
21 distribution to be at the following -- two years from
22 now or whatever. And then -- and it would have
23 happened. And that's why they kept saying that you need
24 to elect; you need to elect; you need to elect; if you
25 want to interest, you got to elect?

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1 A By not electing, though, I am electing to
2 defer; right?

3 Q No, you haven't commenced the benefit. See,
4 you could have even taken an annuity last year if you
5 wanted to. You hadn't decided what you wanted
6 because --

7 A I know.

8 Q -- you hadn't taken an election.

9 A I know.

10 Q Okay. Well, you know they don't know what your
11 decision's going to be I know.

12 A If I had taken an annuity, they would have paid
13 me back for 27 months.

14 Q Maybe. I don't know. I'm not an expert. But
15 my point is this --

16 A That's what that says (indicating).

17 Q My point is this: This doesn't affect this
18 case at all. This says nothing about how you commence
19 the benefit of a lump sum payment of the PPA. It says
20 nothing about that.

21 A It says to me if you do not elect it they
22 should -- they owe you interest.

23 Q If you do not elect it?

24 A Right. And I did not elect it. I did not
25 elect --

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1 Q Where does it say that?

2 A Well, let me see it.

3 Q Where does it say if you do not elect it?

4 A Well, it doesn't say that. But if you don't
5 take it, it says: While the former employee is unable
6 to earn additional pay credit he continues to accumulate
7 interest credits until the balance is withdrawn.

8 Q But you have to -- you have to commence the
9 benefit first in order to defer the payment of the lump
10 sum. Otherwise, IBM doesn't know what you're doing.

11 A I wasn't doing anything.

12 Q But --

13 A I realize that.

14 Q You were making a decision, I think -- I think
15 you making a decision --

16 A Not to.

17 Q -- that you wanted to wait to receive your lump
18 sum payment and let it collect interest, but you never
19 conveyed that to anyone.

20 A No.

21 Q And the way you do that is by filling out the
22 paperwork, which is what the plan says: Within a month
23 after your separation, you shall elect whatever option
24 you want. It says shall. It doesn't give you a choice.

25 A But I did elect by not doing anything.

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1 Q No, that's not an election. There's paperwork
2 that you had to fill out. They sent it to you. You
3 didn't fill it out.

4 A No, I didn't fill it out.

5 Q And that's why you didn't get the interest.
6 That doesn't address the issue in our case (indicating),
7 which is how do you go about electing the payment of a
8 distribution of a lump sum under the IBM pension plan.
9 That's the issue in this case. And the plan's very
10 clear about how you do that, and you've told me you
11 didn't do it. And you've told me why you didn't do it.

12 A Right; because I thought I would not be able to
13 get any more money.

14 Q I understand. There's really no basis for this
15 case to go forward, is there? I mean, this is an ERISA
16 case now, which means that the plan document is going to
17 determine whether you were entitled to the benefit.

18 A The plan document does not say that I'm not.

19 Q This is the plan document (indicating)?

20 A This is not (indicating)?

21 Q No, that's not the plan document. This is the
22 IBM pension plan.

23 A Is that the one that's in effect now?

24 Q Yeah. And it was the one that was in effect at
25 the time.

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1 A What about that other one that we had?

2 Q The summary plan description?

3 A Yeah.

4 Q That's this one (indicating).

5 A Was it in effect?

6 Q Yeah. Remember, I refreshed your memory at the
7 beginning of the deposition when I told you that when
8 you spoke to Kathy she said that the -- this was the
9 summary plan description that would have applied in
10 1993. But you actually retired in May of 2003; right?

11 A The second time?

12 Q Yeah. And that's when you had the -- you had
13 the requirement of commencing your benefit within a
14 month of your retirement.

15 A I never did read anything that said that I had
16 to do it, though.

17 Q Well, it was in this document (indicating).

18 A That you have to do it?

19 Q I just read it to you. You shall commence the
20 option. We just read it, remember?

21 A I know. But does shall mean that I have to?

22 Q Shall means must.

23 A Shall means must?

24 Q Yeah.

25 A Evidently, I didn't must because I didn't do

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1 it; right?

2 Q Right.

3 A So that's why -- that's why I think that they
4 owed me interest because they had my money and they were
5 making money on my money.

6 Q I understand why you felt that way. But it's
7 clear from the plan document -- and this is what they
8 were trying to tell you all along in those letters --
9 that under this plan you've got to commence the benefit
10 within a month of your separation if you want to take a
11 lump sum and get interest on it. And you didn't do
12 that, and you still didn't do it. Even after they sent
13 you a letter, you didn't do it.

14 A I didn't read that there.

15 Q Well, they told you three times before you
16 elected your option. They told you a year before you
17 elected your option, you've got to commence your benefit
18 if you want the interest, and you didn't do it.

19 A They never did tell me that. I don't think
20 they ever told me that.

21 Q Well, we just read three letters where they
22 told you, you need to commence your benefit.

23 A I mean, but no -- but they did not say that I
24 would not get interest if I didn't. In the letters they
25 did after I retired.

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1 Q Well, that's what I'm talking about.

2 A Yeah.

3 Q My point is: You retired in 2003.

4 A Right.

5 Q They sent you letters as early as August of
6 2004 saying, you're not going to get interest.

7 A Right.

8 Q The first letter says: You were required to
9 commence your benefit immediately after your separation
10 on May 31, 2003; despite repeated requests that you
11 complete the necessary application for benefits you
12 failed to do so.

13 A Correct.

14 Q Okay. The plan does not allow interest credits
15 on your account balance after May 31, 2003, due to
16 delayed commencement.

17 So the point is: They were telling you in
18 these letters, the reason you're not getting interest on
19 your lump sum is because you didn't commence your
20 benefits within a month after your termination; right?
21 And that's exactly what the plan says you have to do.

22 A But this one doesn't say that.

23 Q Well, that's the summary plan description.

24 A On page 21?

25 Q That's just a summary of the plan.

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1 A Deferral of payment, does that say that I have
2 to?

3 Q Well, let me see if it even addresses
4 commencing.

5 A Page 21.

6 Q But what we're really looking at here, sir, is
7 commencing the benefit.

8 A I felt that if I -- it says: You may elect to
9 defer. By not doing anything, I was deferring.

10 Q You thought you were electing?

11 A Sure.

12 Q But that's not how you elect under a pension
13 plan. Silence is not an election. An election is when
14 you fill out paperwork and say, here's what I want to do
15 with my money.

16 A I realize what you're saying.

17 Q Okay. Because when you do nothing, nobody
18 knows what you want to do.

19 A But they know what I am doing.

20 Q They don't know whether you want annuity,
21 whether you want lump sum, whether you want deferral.
22 They don't know what you want.

23 A I think they knew that I wanted a lump sum. I
24 never did tell anybody that I was going to take an
25 annuity.

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1 Q But until you -- until you indicate that to
2 them in some way, they have no way of knowing it.

3 A I realize that.

4 Q That's why you have to fill out the paperwork.

5 A Because I felt that I was deferring by doing
6 nothing.

7 Q I understand that. I think -- what I'm telling
8 you is: I think you made a mistake because the pension
9 plan doesn't give you the option to do nothing. It
10 requires you to elect that option within a month of your
11 termination. It doesn't say you can just do nothing and
12 defer.

13 A But you can do nothing.

14 Q If you do nothing, you're not going to get
15 interest.

16 A All right. I did nothing.

17 Q Right. So you're not going to get interest.

18 A So that is an option; right?

19 Q Well, not if you want interest.

20 A But the judge in this ruling says that you get
21 interest (indicating).

22 Q If you commenced the benefit.

23 A Does it say anything about commencing the
24 benefit?

25 Q It wasn't an issue in that case. It wasn't an

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1 issue in that case.

2 A Then it's -- it's not true then; right?

3 Q No. The judge didn't need to address that
4 issue in that case. It was not an issue in that case.
5 There wasn't a dispute in that case over whether someone
6 had failed to elect deferral of the lump sum benefit by
7 commencing their benefits after their termination. That
8 wasn't an issue in that case. It just wasn't -- it
9 wasn't --

10 A It wasn't brought up.

11 Q No, it wasn't brought up.

12 What he's saying in there is absolutely
13 correct. As a matter of fact, you did get a deferred
14 lump sum benefit. You did get it. That's correct.

15 A I got it.

16 Q All right. But you didn't get the interest
17 because you never commenced the benefit within a month
18 of your termination.

19 Why don't we just go ahead and continue, but I
20 would suggest you give some thought to whether you want
21 to continue to pursue this in light of --

22 A What about this (indicating)?

23 Q This is the April 18 letter that we talked
24 about earlier?

25 A Yeah.

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1 Q Well, again, it doesn't address commencing the
2 benefit. It addresses determining your distribution
3 date.

4 A Right.

5 Q That's different.

6 A But if I -- if I have my distribution date
7 later --

8 Q But it doesn't address commencing the benefit.

9 A I know.

10 Q Okay. As a matter of fact --

11 A But it says if I choose a later date.

12 Q As a matter of fact, the paragraph above does.
13 This is why I referred it to you earlier. It says: You
14 have to do it no later than the first day of the month
15 either after your 65th birthday or after you separate
16 from IBM. That's exactly what was in the pension plan.
17 That's when you have to commence your benefit.

18 A The next paragraph is irrelevant?

19 Q No. The next paragraph is saying that if you
20 commence your benefit within a month after your
21 separation, then you can choose to take your
22 distribution at a later date, and if you do that, then
23 you will get interest. That's what that's saying.

24 A I read that, choosing the date that you will
25 begin to receive your pension benefit, the longer you

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1 wait, the more you will get.

2 Q Or let's just assume that that's a correct
3 interpretation. All right? There's still a first step.
4 In the same letter there's that first step.

5 A But it does not say it in that paragraph that I
6 have to do the other.

7 Q Yes, you may not begin to receive your benefit
8 later than the first day of the month following your
9 65th birthday or if later following the date separate
10 employment from IBM. You may not. That's pretty clear.

11 A That's right.

12 Q All right. And so that means you must.

13 A Well, but I didn't.

14 Q I know. That's why you didn't get the
15 interest.

16 A But I just feel that I should get it since that
17 says I should.

18 Q But you've got to read the whole letter, sir.
19 You can't just read parts of it.

20 A Okay.

21 Q Okay. We talked about the August 5 letter. I
22 want to make sure, did I introduce the September 20,
23 2004, letter? These are all the exhibits here. There's
24 a July letter. That's the June letter. Okay. I did
25 not. So let me get that September 20th, letter.

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1 Now, when you did retire on May 31st of 2003,
2 you did receive paperwork from IBM to fill out to elect
3 how you wanted to receive your PPA, didn't you?

4 A I don't remember that. I see the sheet that
5 you got it there, but I don't remember any, because I
6 think I was supposed to call them and tell them.

7 Q For example --

8 A Which I did on the phone when I --

9 Q Let me go ahead and introduce -- this is all
10 the same document, yeah. Well, page 4.

11 MR. MUNGER: Let's go ahead and get this
12 marked, please.

13 (Defendant's Exhibit No. 13 was marked.)

14 BY MR. MUNGER:

15 Q I'm handing you a copy of a document that you
16 produced for us. Do you recognize that letter?

17 A Right.

18 Q All right. This is a letter that you received
19 in August of 2003 after you had retired; correct?

20 A Correct.

21 Q And in the second paragraph, it reflects that
22 you requested a copy of the 1993 summary plan
23 description, and the response is: IBM does not maintain
24 former summary plan descriptions; however, I have
25 enclosed a copy of the IBM retirement plan document that

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1 was in effect on September 30, 1993; correct?

2 A Uh-huh.

3 Q So you did receive the plan document,
4 Exhibit 9, in August of 2003?

5 A I didn't receive this document (indicating).

6 Q You received a document like it that contained
7 the IBM personal pension plan; correct?

8 A I think so. I don't -- I don't know.

9 Q Well, doesn't this accurately reflect that it
10 was enclosed?

11 A Yes.

12 Q Okay. And you recall getting it, don't you?

13 A I assume, but I couldn't swear to it.

14 Q Well, you can't deny that you didn't get it;
15 correct?

16 A I think they told me that there was not one --
17 that they didn't have a copy of it that was in effect.

18 Q Well, it says they didn't have a copy of the
19 summary plan description?

20 A Right.

21 Q But it goes on to say: I have enclosed a copy
22 of the IBM retirement plan document that was in effect
23 as of September 30, 1993.

24 A Okay.

25 Q And you did receive that, didn't you?

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1 A I assume that I -- if you don't have it, I
2 don't know that I received it. I received some stuff,
3 but -- you have a big thick thing like this
4 (indicating), another one that was real old. I think
5 it's probably what I had received in '93. I don't know.
6 I might have found it.

7 Q Okay.

8 A Because I think they told me they did not have
9 a plan.

10 Q Summary plan description?

11 A Right.

12 Q But they had a plan document because they
13 enclosed it?

14 A Right. Do you have another thick thing like
15 this, about half that thick (indicating). I didn't
16 bring it with me, I don't think, mine.

17 Q I have the summary plan description. We've
18 already introduced that.

19 A I didn't bring my copy. It had two or three
20 pages first telling what it was.

21 Q Okay.

22 MR. MUNGER: Let's go ahead and introduce
23 this.

24 (Defendant's Exhibit No. 14 was marked.)

25 BY MR. MUNGER:

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1 Q Do you recognize that document?

2 A Yes.

3 Q Isn't this a document that you received when
4 you retired from IBM?

5 A Right. I don't remember the date that I got
6 this.

7 Q All right. But it contained information about
8 how you could commence your benefit; correct?

9 A Rollovers and things like that.

10 Q Right. And even it contained a guide on
11 annuity versus lump sum decisions; correct?

12 A It may be in this one.

13 Q At the end?

14 A Yeah.

15 Q And it says on page -- the second to the last
16 page that you have to select the payment option;
17 correct?

18 A Second to the last page?

19 Q Right here (indicating).

20 A Page 1 of 10?

21 Q Yes.

22 A Page 1 of 10? What's the date?

23 Q Yes, 1 of 10. The IBM personal pension plan
24 and IBM personal pension plan -- prior plan provide you
25 with flexibility in the way you can receive your

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1 benefit. For example, you can select the payment option
2 that will best meet your needs. Right?

3 A Uh-huh.

4 Q And then it talks later about annuity and lump
5 sum?

6 A Right.

7 Q Okay.

8 A And I elected the annuity.

9 Q But not until -- I'm sorry. You elected
10 annuity?

11 A No. I mean, I elected lump sum.

12 Q But not until 2005; correct?

13 A That's when I -- right, that's when I told them
14 I wanted to take the money.

15 Q Right.

16 A I had it rolled over into a 401(k).

17 Q Other than the language in the April 18 letter
18 which you've previously identified -- let's see. Where
19 is that letter? Here it is (indicating). Other than --

20 A April 18th, yeah, got it.

21 Q Other than the April 18th, 2005, letter and the
22 paragraph at the bottom of the first page determining
23 your distribution date, is there any other reason for
24 your belief that you ought to be entitled to interest on
25 the lump sum payment?

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1 A Page 21 of this one (indicating).

2 Q Okay. And what exhibit number is that?

3 A It's 5. Deferral of payment.

4 Q All right. And you're referring to 1.6.5 --

5 A Right.

6 Q -- right? The portion of your account balance
7 that you defer will remain in the plan and accumulate
8 earned interest credit each month until your account
9 balance is distributed in its entirety; correct?

10 A Correct.

11 Q Okay. Other than those two paragraphs, is
12 there any other reason why you believe you're entitled
13 to interest of the money?

14 A This (indicating).

15 Q Let's go ahead and introduce that, because I
16 don't have a copy of that.

17 A Isn't there a check in the lower left-hand
18 corner?

19 Q Yeah, it is, but I don't have it with me.
20 There was one other document that -- that savings plan
21 document. I think it's over there. Let me have
22 somebody copy these right now. We'll take a break. And
23 I will make two copies and I'll give you back the
24 original.

25 A I need to take a break anyway.

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1 (Recess from 11:22 a.m. through 11:32 a.m.)

2 (Defendant's Exhibits No. 15 and 16 were marked.)

3 BY MR. MUNGER:

4 Q All right. Let me hand you what's been marked
5 as Exhibits 15 and 16. And the reason I introduced
6 these is I just wanted to make sure I was clear on why
7 you felt you were entitled interest since you retired it
8 under lump sum distribution of your PPA. And you've
9 told me that you are relying upon language in the
10 memorandum and order in Exhibit 15 contained on page 3,
11 that you are relying upon language contained in the
12 April 18, 2005, letter?

13 A Correct.

14 Q And then finally, that you're relying upon
15 what's been marked as Exhibit 16, the IBM savings plan
16 and payment rights notice?

17 A Uh-huh. Correct.

18 Q Okay. All right. Is there any other reason
19 why you believe you're entitled interest on the
20 distribution?

21 A No. There may be evidence, but I don't know.

22 Q Okay. Just for purposes of identification -- I
23 may or may not have introduced this -- do you recognize
24 this document? Is this the thinner one you were talking
25 about?

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1 A Yes.

2 Q Okay. All right.

3 MR. MUNGER: All right. Let me just go
4 ahead and mark that.

5 (Defendant's Exhibit No. 17 was marked.)

6 BY MR. MUNGER:

7 Q I'm handing you marked Exhibit 17. Is that a
8 copy of the pension plan document that was in effect
9 prior to IBM going to the PPA accounts?

10 A Correct, I assume.

11 Q Okay. All right.

12 A This was prior to the other one, the PPA. See,
13 they had one before the PPA.

14 Q And this was even before that?

15 A Right. This is the one --

16 Q This is an old one then?

17 A -- that I retired on in '93.

18 Q Okay. All right.

19 A Okay.

20 Q So but since '93, it was changed when they
21 implemented the PPA account?

22 A Right. It was changed before that with that
23 other one.

24 Q But this is the plan that -- this is the plan
25 that was in effect when you retired in 2003?

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1 A Correct.

2 Q Okay. And that is Exhibit 9? Okay.

3 Now, you told the Court in the claim that you
4 filed in magistrate court and in the lawsuit in the
5 joint preliminary planning report that we introduced at
6 the beginning of the deposition that the value of the
7 interest that you are claiming is in the amount of
8 \$15,000?

9 A That's the most you can claim in the magistrate
10 court.

11 Q Okay.

12 A In this, I said it was more than 15
13 (indicating). I don't know what it is.

14 Q All right. Have you done an estimate of the
15 interest that you believe you're entitled to?

16 A I asked Mr. Hill to find out what interest IBM
17 charged me on the money, but he's not given me that
18 information.

19 Q Charged you on what money?

20 A They charged me \$17,000 interest on the
21 leveling that they took back out of my pension. They
22 took \$34,000 out of my pension.

23 Q That concerned the leveling that occurred
24 awhile back; right?

25 A (Witness nods head.)

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1 Q Okay. That affected your PPA balance; right?

2 A Right.

3 Q All right. And you wanted to know what
4 interest they charged you for that money?

5 A To get \$17,000. I asked him this two or three
6 months ago, and he's not given me that information.

7 Q Okay. Did you just send him a letter?

8 A Yeah, I sent him a letter. Yeah, I sent him a
9 letter.

10 Q Okay. All right. So you don't know what
11 interest they used?

12 A No.

13 Q But are you suggesting that that ought to be
14 the same rate that you would be entitled to?

15 A I don't see why not.

16 Q Now, you're claiming the interest based on the
17 151; correct?

18 A Correct.

19 Q All right. So without knowing what that rate
20 was, you can't tell me what the dollar value is of the
21 interest?

22 A I don't know.

23 Q And you haven't done any other calculations of
24 the dollar value of the interest?

25 A Well, I came up with some figures at 8 percent,

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1 but that's a year. See, I don't know how they charged
2 it, if it was monthly or daily or how they got their
3 figure.

4 Q All right. You've handed me a document that --

5 A That's not exactly a document.

6 Q Well, it's a piece of paper with some numbers
7 on it. I'm not sure I understand. Did you use 151 at 8
8 percent?

9 A Right.

10 Q And you came up to 12,000 annually?

11 A The top one, yeah.

12 Q Annually?

13 A That was the first year.

14 Q Okay.

15 A Then the second one, I added that 12,000 into
16 152.

17 Q Oh, so you're compounding the interest?

18 A Right, yearly.

19 Q Okay.

20 A But if you do it monthly, of course, it would
21 be more.

22 Q All right. So your total would be 25?

23 A Plus, don't I have another three months too?
24 We're talking about 27 months.

25 Q So your total would be 28,640. That's using an

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1 interest rate of 8 percentage -- annually 8 percent and
2 compounding the interest; correct?

3 A Correct.

4 Q Okay. Now --

5 A But I think 8 percent -- they may have charged
6 me more than 8 percent. I don't know.

7 Q Well --

8 A That --

9 Q -- according to the Court's order, the interest
10 rate is one percentage point higher than the rate of
11 return on one year treasury securities. Okay. And you
12 wouldn't know what that was for the two years in
13 question. But that's, according to the Court,
14 apparently how you determine the interest rate under the
15 plan?

16 A All right.

17 Q Correct?

18 A Correct. But I don't know how IBM determined
19 the plan interest rate that they charged me.

20 Q Yeah, but this is how you would determine the
21 interest rate for you; correct?

22 A I assume. I don't know. They don't give you
23 numbers there, so.

24 Q It says at 5 percent -- every month the PPA
25 accumulates pay credits at 5 percent?

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1 A Pay credits, yeah.

2 Q And an interest credits at a rate of one
3 percentage point higher than the rate of return on a one
4 year's treasury security?

5 A Correct.

6 Q So that's how you would calculate the interest?

7 A But they have -- no longer have the treasury
8 security. That's not what they use anymore.

9 Q I'm sorry?

10 A They don't have that treasury security anymore,
11 I don't think. I think they use something different. I
12 think that's what that says. But like I said, I think
13 they've done away with that.

14 Q When do you think they did away with it?

15 A I don't know. About two or three years ago.
16 Or maybe that's the new one. Maybe they did something
17 else earlier.

18 Q Well, that order seems to be pretty current.
19 This says --

20 A U.S. Treasury Bill historical rates.

21 Q That's a lot lower than 8 percent, isn't it?

22 A Well, during Carter's administration, it was
23 about 11 or 12 percent.

24 Q Of course, this is -- this is '98. It doesn't
25 go beyond that?

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1 A Right. That's what I'm saying. That book was
2 published in '99.

3 Q Yeah. But according to this order, at least
4 after 1999, they used 1 percent over the --

5 A Because 1 percent over whatever that --

6 Q Over the one year treasury securities?

7 A Right.

8 Q Okay. So that would have been the interest --
9 the way of calculating the interest for the years in
10 question for you?

11 A Right.

12 Q Okay. Well, we can figure out -- we can
13 determine what the securities were for those years and
14 figure out what the interest was.

15 A I asked him that in that letter. That's one of
16 the things I need. But I also wanted the interest
17 rate -- like I said, if I don't get it, I guess I can
18 ask the Court to supply that information. He told me to
19 wait and he would get it. But I don't --

20 Q If you're talking about the handwritten --

21 A Uh-huh.

22 Q -- letter that you sent to him, when he showed
23 me that -- let's see. There was some information in
24 there that I didn't think was relevant. Maybe we can
25 look at that right now. Maybe we can agree on what

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1 is -- let me just hand you a copy of your letter.

2 A I think I have a copy.

3 Q Oh, do you? Why don't you pull it out?

4 A I don't know if I have a copy or not.

5 Q Here (indicating), I got an extra copy. Let me
6 hand this one to you. Okay.

7 A Thank you.

8 (Defendant's Exhibit No. 18 was marked.)

9 BY MR. MUNGER:

10 Q Is that a copy of the letter you sent to
11 Mr. Hill requesting certain information?

12 A Right.

13 Q Okay. Question No. 1 I don't believe is
14 relevant to this case. There is no claim in this case
15 based on the leveling. So can we agree that we do not
16 have to respond to that?

17 A I would like a response to it.

18 Q The leveling issue is not a part of this case.

19 A I know. But when was the money taken from my
20 pension plan?

21 Q Why does that matter in this case?

22 A It doesn't in this case.

23 Q Okay. Well, then we're not going to respond to
24 that.

25 A But it may be in another case.

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1 Q At what date was the money paid to the plan,
2 that's not relevant to this case either. Okay. Now,
3 No. 3 is the question you just referred to earlier,
4 what's the interest rate on the money and how was it
5 compounded, daily or monthly. That, we will get you.

6 A All right.

7 Q Okay. When you say the interest rate on the
8 money, you're talking about the lump sum; right?

9 A No, I'm talking about the interest rate that
10 they used on the 37 -- on the \$34,000 that they took
11 away --

12 Q That's not going to be relevant.

13 A -- to get 17,000.

14 Q That's not going to be relevant because we just
15 concluded from the Court's order that the interest rate
16 for the lump sum distribution is 1 percent over the
17 treasury security rate. So we're not going to respond
18 to that.

19 A Okay.

20 Q The summary plan description that was in effect
21 on September 30, 1993, I don't believe there is one. I
22 think they've told you that repeatedly. I think what
23 they told you is --

24 A This right here (indicating).

25 Q Okay. Well, then you have it.

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1 A Yeah.

2 Q Okay. Then you have it.

3 A But it does not say anything in there about --
4 that relates to a pension and pension payback if you get
5 out of the pension.

6 Q Pension and pension payback? I'm not sure what
7 you mean by that.

8 A The leveling money.

9 Q Okay. Well, that's not part of this case. The
10 leveling issue is not part of this case.

11 A I know. But it is part of the case as why I
12 did not take the money earlier.

13 Q I understand that you were disputing the
14 leveling issue.

15 A Right.

16 Q But that doesn't have any bearing on whether
17 you're entitled to the interest in this case. And you
18 have the -- you have the September 30 plan. Okay.

19 A Right.

20 Q And the last thing you've asked for on the
21 sheet you made a copy from Watson Wyatt; will you please
22 ask the plan why I did not receive the credit on the
23 pension credit report. Okay. That -- again, that
24 pertains to the calculation of your PPA account balance.

25 A Right.

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1 Q That's not part of this case.

2 A All right.

3 Q So the only thing we owe you is No. 3, and we
4 will get you that.

5 A All right.

6 Q Okay. And you sort of in your P.S. asked for
7 that, haven't you? P.S. I need to know the interest
8 rate on the PPA June 20, 2003 -- yeah, you've sort of
9 asked the same question.

10 A Right.

11 Q Okay. All right.

12 A But I also think what might enter into it is
13 the amount of money that the pension plan made during --

14 Q That doesn't matter. According to the judge,
15 that doesn't matter.

16 A Okay.

17 Q The interest rate is 1 percent over the
18 security.

19 A All right.

20 Q That's the rate that the plan pays. And we
21 don't know what that is. We don't know if it's 28 or
22 some amount less or greater than that.

23 Let me see. I may be done, but I want to make
24 sure I've covered everything.

25 A But I could ask the Court for this information.

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1 Q Well, technically, what you're supposed to do
2 is serve in a written --

3 A Like y'all served me?

4 Q Yeah, on us and then give us 30 days to respond
5 to it. And we can either object to it or we can respond
6 to it. And if -- if we respond, fine. If we object to
7 it, then your only recourse is to go to the judge and
8 ask the judge to compel us to respond to it. And then
9 the judge would have to decide whether it's relevant to
10 the claims that are in the case.

11 A All right.

12 Q All right. And if he decides it's not relevant
13 to the claims in the case, then --

14 A Then you won't have to do it.

15 Q Then we won't have to produce it.

16 A If it is relevant, then you will have to
17 produce it.

18 Q If he thinks it's relevant, then we will have
19 to produce it. And that's the way it works.

20 A Okay. That's what I thought.

21 Q If you want, we'll send you a written response
22 to this. Would you like that?

23 A Well, yeah, that would be fine. And it will
24 tell me that you won't do the other, too; right?

25 Q I'll tell you, I will send you a written

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1 response to your letter based on what we just discussed
2 today.

3 A Okay.

4 Q Now, you were told in a number of the phone
5 calls that you had with the employee services center
6 that you were not going to be paid the interest on your
7 lump sum because you had not commenced your benefit when
8 you retired; correct?

9 A I was told I was not going to get the money. I
10 don't know if they put that because I did not commence
11 in there.

12 Q Do you recall whether a woman named Darlene
13 told you that?

14 A I talked to a Darlene, I know, and I sent her a
15 letter.

16 Q Uh-huh.

17 A I don't know if she said that, but she told me
18 I would not get interest.

19 Q Right.

20 A As did Mr. Morrissey.

21 Q Right.

22 A I just didn't understand why I wouldn't.

23 Q Well, he explained in the letters to you why
24 you weren't going to get it. We went over that; right?

25 A Right. But he also explained that I would get

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1 back pay if I took that annuity.

2 Q But you never took the annuity?

3 A I didn't take the annuity.

4 Q So that doesn't matter?

5 A (Witness shakes head.)

6 Q Now, you were receiving a pension benefit until
7 the year 2000; correct?

8 A Correct.

9 Q You were drawing checks, and it was in the year
10 2000 that you elected to go to the PPA; correct?

11 A Well, right, at the end of '99.

12 Q Right.

13 A December of '99.

14 Q How long did you think you could wait before
15 commencing your benefits?

16 A Until I was 70 and a half, what one of those
17 letters said.

18 Q You mean because of the savings plan document?

19 A Uh-huh, that's what it says.

20 Q For a savings plan. You don't have a document
21 like that that pertains to the PPA, do you, or the
22 pension plan?

23 A I thought they were together. I thought they
24 were one and the same. As far as I know, I've never had
25 an IBM savings plan per se. That's why I thought it was

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1 the same thing.

2 Q Did you have a 401(k) plan in 2003?

3 A No.

4 Q Did you have any -- a retirement savings plan?

5 A Yeah, I guess -- yeah, I guess I had some kind
6 of thing.

7 Q That's probably what it referred to.

8 A I think I had 7 or \$8,000 in it. IBM matched
9 the money. What was that? Was that a 401(k)?

10 Q I don't know. In 1993, it could have been.

11 A No, not in 1993.

12 Q In June of 2003, did you have a retirement
13 savings plan at IBM?

14 A I had a plan where I put money in and they
15 matched it.

16 Q Yeah, that's what this is all about.

17 A Okay.

18 Q Deferrals and --

19 A Okay.

20 Q That's what that's all about. That's different
21 from the retirement.

22 A I've taken this money out since then.

23 Q Okay. Do you recall having a conversation with
24 someone at the employee services center named Charlie,
25 Charlie Debert (phonetic) who worked for Fidelity

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1 Investments?

2 A I think so.

3 Q Do you recall Charlie telling that you did not
4 commence the benefit when you separated from the
5 company?

6 A No. I know I did not do it. I don't think he
7 told me that I had to do it either, did he?

8 Q Well, it looks like it concerned why it was
9 taking so long to do the calculation.

10 A Which calculation?

11 Q Benefits calculation.

12 A That was -- the calculation was \$151,000.

13 Q You were --

14 A I knew every month it went up, you know.

15 Q You had called a Fenton Thompson, and you were
16 calling back and speaking to Charlie about -- calling to
17 give you the status on what they're doing with your
18 benefits calculation. They had to request your folder.
19 They were going to do that, and they were going to run a
20 calculation, it may take 45 to 60 days. Do you remember
21 that? In that context, he told you that you had not
22 commenced your benefit when you left?

23 A Well, no one there ever told me, I don't think,
24 that I had to commence my benefit.

25 Q Well, like I said, I got --

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1 A They told me that, and I knew I didn't -- that
2 I hadn't done it.

3 Q You told -- you told Christine that when you
4 retired on the 31st of May they sent you a sheet that
5 contained what your retirement would be; correct?

6 A Correct.

7 Q And Christine said, right, but have you to call
8 us back to start commencing your benefits, we need to
9 hear from you?

10 A Right.

11 Q All right. And you didn't do that?

12 A No. I did not want to commence my benefits.

13 Q So you thought that by commencing your benefits
14 that meant that you would have to take a payment then?

15 A Yes.

16 Q Okay.

17 A On one of those sheets that I -- the one that
18 does annuities and all that, they got on it at the top
19 of the page the date of my commencement, but I didn't do
20 it then.

21 Q Well, they were assuming that you were going to
22 commence your benefit on that date; correct?

23 A Well --

24 Q They did a calculation --

25 A Yes.

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1 Q -- assuming that you were going to commence
2 your benefit on that date; correct?

3 A (Witness nods head.)

4 Q That's what -- let's see. And you wrote all
5 over that document. Remember? You did your own numbers
6 on that. Let's see if we can find that. I think I know
7 what you're talking about.

8 A That why I calculated.

9 Q In other words, they did some calculations for
10 you at the time that you retired --

11 A Right.

12 Q -- to give you an idea of what the balance
13 would be --

14 A Right.

15 Q -- if you commenced your benefit on that date?

16 A Right; which I knew it was \$151,000.

17 Q Let's see. Where that is?

18 A It's got a chart on it.

19 Q Are these the documents you're talking about?

20 A No. Yeah.

21 Q Benefit commencement date of June 1, 2003?

22 A Right.

23 MR. MUNGER: Let's go ahead and introduce
24 those.

25 BY MR. MUNGER:

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1 Q So what they did was they sent you these
2 estimates, and it was Watson Wyatt --

3 A Right, Watson Wyatt.

4 Q -- at the time that you retired so you could
5 determine what the balance would be in your account;
6 correct?

7 A They did a whole page on -- a whole page of
8 just numbers, how it went up each month. Wasn't that in
9 that group?

10 MR. MUNGER: Let's go ahead and introduce
11 that.

12 (Defendant's Exhibit No. 19 was marked.)

13 BY MR. MUNGER:

14 Q Let me hand you that.

15 A Yeah, that's what I --

16 Q Okay. I think this is part of it.

17 (Defendant's Exhibit No. 20 was marked.)

18 THE WITNESS: I guess I should have brought
19 all my stuff.

20 BY MR. MUNGER:

21 Q I've handed you another document. Is this a
22 copy of a benefit estimate that you received when you
23 retired?

24 A Right.

25 Q And that assumes, again, which you can see,

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1 that you would commence the date on June 1, 2003;
2 correct?

3 A Correct.

4 Q And you didn't do that?

5 A I retired on that date, but I did not commence
6 my --

7 Q Okay.

8 A When I retired. This has got benefits
9 commencement date on it.

10 Q Okay. That assumed that if you retired -- I
11 mean, if you commenced your benefits when you retired
12 that this is what your benefit would be; correct?

13 A Right. Right.

14 Q All right.

15 A Because I had a bunch of questions why that
16 was done, you know, why that is what it is too, so.

17 Q But that really has no bearing on this case?

18 A No.

19 Q No.

20 A But I was arguing with the pension people about
21 it -- or discussing with the pension people.

22 Q Okay. Did you receive any money as a result of
23 the settlement of the class action?

24 A No. You mean in Illinois?

25 Q Yeah.

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1 A No, not yet. They talked like it would be the
2 end of year.

3 Q Do you have any idea what the amount of your
4 payment would be?

5 A No. I understand they gave some figures, but I
6 don't really know. I don't know whether I would have to
7 sign a no-suit clause to get the money or not, probably
8 will the way they talked.

9 Q Ordinarily, to accept a settlement, you've got
10 sign a release.

11 A A friend of mine received settlement from that,
12 but she was in the Class 3, I think. She was only with
13 IBM three or four years, and that one has been settled.

14 I don't believe anyone at IBM ever told me that
15 I had to do this, like I said, when I retired.

16 Q But it was required in the plan, and you had
17 the plan document?

18 A It says that. But like I said, no one ever
19 said that, you know, you've got to do it, and that's
20 why -- the way I interpreted that, by not doing it, I
21 was not -- you know, not doing it.

22 Q Well, Mr. Morrissey said in one of his letters
23 that they had called you repeatedly and asked you to
24 commence your benefits and that you had not filled out
25 the paperwork to do so --

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1 A Correct.

2 Q -- is that true?

3 A I think he mentioned that; right.

4 Q Is that true? Did that happen?

5 A I'm not sure that they called me, but like I
6 said, I know in the letters they said that I should do
7 it.

8 Q So you don't recall one way or the other
9 whether they contacted you and said you need to commence
10 your benefits? They may have, they may not have, you
11 just don't recall?

12 A They may have.

13 Q Okay.

14 A And they may have said I need, but they did not
15 say that I had to. See, I determine that as different
16 language.

17 Q So if somebody says, you need to commence your
18 benefit, you don't believe that means you have to?

19 A Correct.

20 Q And it's possible that people did contact you
21 and say to you, Mr. Adams, now that you've left the
22 company and retired, you need to commence your benefit?

23 A They could have, but I don't know. I could not
24 swear one way or the other.

25 Q Okay.

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1 A But they did not put much emphasis on it, I'll
2 put it that way, to make me believe that I had to. Of
3 course, I realize I didn't have to because I didn't, you
4 know. I felt -- I was never in any fear of losing the
5 pension by not doing it. Put it that way.

6 Q You didn't lose the pension?

7 A That's what I'm saying.

8 Q Okay. But you were told before you elected the
9 option repeatedly in various letters that you were not
10 going to get the interest if you didn't -- if you didn't
11 commence the benefit, and yet, you still did not
12 commence the benefit?

13 A I never got anything that said that I would get
14 interest if I commenced the benefit.

15 Q Commenced it at that point?

16 A Right. I never -- you know, they didn't say
17 one way or the other. No one ever told me that I would
18 get any benefits other than these letters that I've --
19 the four things that I gave you.

20 Q Okay. Can you think of any other facts or
21 reasons why you believe you're entitled to the interest
22 on your PPA account balance that we haven't talked
23 about?

24 A The only thing I would say is, you know, the
25 IBM pension plan made money on the money while it was in

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1 their possession, and I think I should receive whatever
2 profit that they made off of that money. You know, if I
3 give you a hundred thousand dollars and you keep it two
4 years and you make \$20,000 --

5 Q But the plan dictates what the lost interest
6 is.

7 A I realize that.

8 Q It's not based on -- you're not claiming in
9 this case that you would have taken the money sooner and
10 invested it and gotten some return on it?

11 A Well, if I had taken it earlier, I would have
12 invested it, and I hope would have been made profit on
13 it. I don't know.

14 Q But that's very speculative?

15 A Sure. I could have lost money.

16 Q Right. Right.

17 A But IBM made money.

18 Q But according to the plan, the only benefit you
19 lost was the interest, the accrued interest?

20 A That's all that the plan -- that's what it
21 says. I'm not claiming that I would have made a hundred
22 thousand dollars off the money had I had it.

23 Q So what really matters is what is the value of
24 1 percent over the treasury securities for the two and a
25 half years that you waited for the 151,000?

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1 A Well, I think what's fair is for them to pay me
2 what they charged me.

3 Q Well, that's not -- you got to go by what's in
4 the plan.

5 A Right. I understand.

6 Q As the judge said --

7 A They may not -- but the judge may say that they
8 should. I don't know.

9 Q Well, one judge has already said that the
10 plan's pretty clear that it's 1 percent over the
11 treasury securities?

12 A But as you said, they were not -- they were not
13 trying this case.

14 Q No, that -- that did not decide when you have
15 to commence the benefit. But it does say how the
16 interest is calculated?

17 A Right.

18 Q And how the interest is calculated doesn't
19 differ from case to case.

20 A Well, I'll have to live with that, like I said.

21 Q Yeah.

22 A And I don't know --

23 Q And we're going to get you that number.

24 A -- that the judge that we're in front of will
25 agree with Judge Cooper or Judge Murphy.

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1 Q Well, all he has to do is look at the plan?

2 A Right.

3 Q If the plan says that, then that's the way you
4 calculate the lost interest?

5 A I don't know what the -- like I said, the plan
6 just says that -- on these things that I've showed you
7 say that the longer I wait, the more money. I may get a
8 nickel more. I may get a dime more.

9 Q Now, in fairness to you, if you decide after
10 today to continue to pursue this, based on what you have
11 told us, it would be my intention to file a Motion for
12 Summary Judgment with Judge Thrash asking him to dismiss
13 this claim based on the plan document. I have to do
14 that by June 26th. If I do that, then you'll have a
15 certain amount of time to respond to it. Then we can
16 file and apply, and then the judge can issue an order.

17 If the judge were to grant the motion and
18 dismiss the, we could ask for you to pay some of the
19 legal costs associated with the defense of the case.
20 Now, the legal costs, I'm not talking about attorneys'
21 fees. I'm just talking about the cost of this
22 deposition, the copying cost, that sort of thing.

23 A Right.

24 Q So you should know that ordinarily if a party
25 is successful on the summary judgment they're

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1 automatically entitled to those costs. I'm not sure how
2 much that would be at this point. But I just wanted --
3 you need to know that.

4 A Thank you.

5 Q Now, if -- what I would ask you to do is to
6 reconsider -- now that you've seen this plan document
7 and you know that it says you must commence the benefit
8 within a month of your retirement, reconsider whether
9 you want to pursue this case, and let me know -- you
10 don't have to make a decision right now. But let me
11 know early enough so that I don't have to spend the time
12 and the money preparing motion for summary judgment.

13 Fortunately, I guess for everybody, I'm going
14 to be on vacation the next two weeks. So if you could
15 let me know, let's say, maybe by the 15th of June if you
16 want to continue to pursue this, I would appreciate it.
17 And what I'll do for you is I'll hold off on preparing
18 the motion until then so that you won't run the risk of
19 having to pay costs if you don't prevail.

20 And then if you choose to pursue it, we'll go
21 ahead and prepare the motion. We'll file, and you can
22 file your response, and we'll let the judge decide.
23 But, you know, I just -- in fairness to you, I thought
24 you should know, you know, what the next step is --

25 A Right.

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1 Q -- in the process. At this point, I think the
2 only thing we need to get to you is what the interest
3 would have been on the \$151,000 from the time you
4 retired until the time you elected the distribution.

5 A And you were going to get me that other
6 information.

7 Q Pardon me?

8 A The interest that they charged me, were you
9 going to do get that?

10 Q No. No. I took the position that -- I took
11 the position that the plan, and especially in light of
12 that order, clearly dictates how the interest is
13 calculated. And it's 1 percent over the treasury
14 security rate. So, no, I'm not going to -- I'm not
15 going to provide -- I'll provide a response to your
16 letter that will say that we don't think this is
17 relevant and here's why. Okay. I'll get you that as
18 well. And then I think we'll be done with the discovery
19 because the judge set a deadline of Monday and then
20 we'll have until, I think, June 26th to file the
21 dispositive motion.

22 Okay. Unless there's anything else you want to
23 add to your testimony, I think we're done. And what
24 will happen is this: The court reporter will keep the
25 exhibits that are marked with the blue tags, and then

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1 either party has the opportunity to order a transcript.
2 If you order a transcript, you're going to have to pay
3 for it in advance, and they charge you by the page for
4 the transcript.

5 You also, by the way, have the right to what is
6 call reserve signature of the deposition. What that
7 means is: If you want to review the transcript that she
8 prepares of your testimony to make sure that it
9 accurately reflects what you said and to make sure that
10 what you said is accurate and truthful and complete, you
11 can exercise that option.

12 If you do, this is what will happen: If a
13 transcript is ordered, it will be sent to you. You can
14 have it sent to you at your home if you'd like. And on
15 the inside cover of the transcript will be a document
16 called an errata sheet. That enables you to identify by
17 line and by page any changes you want to make to the
18 transcript. Once you've made those changes, then you
19 have to sign the errata sheet, and then you are
20 certifying that with your changes the transcript now is
21 complete, accurate, and truthful. And then you have to
22 send it back to the reporter within 30 days.

23 Okay. On the other hand, if you don't want to
24 go through all of that, you can just simply waive
25 signature. And what will happen is: She'll make a note

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1 of that today, and if either of us order the transcript,
2 the transcript that is prepared will be the final
3 transcript for the case.

4 A I would like the waiver.

5 Q You would like to waive it?

6 A Right.

7 Q All right.

8 MR. MUNGER: So you've got that? He's
9 going to waive signature.

10 THE COURT REPORTER: Yes, sir.

11 MR. MUNGER: I think we've covered
12 everything then.

13
14 (Deposition concluded at 12:16 p.m.)
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C E R T I F I C A T E

G E O R G I A

CARROLL COUNTY:

I hereby certify that the foregoing deposition was taken down, as stated in the caption, and the questions and the answers thereto were reduced to typewriting under my direction; that the foregoing pages 1 through 95 represent a true and correct transcript of the evidence given upon said hearing, and I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in any way interested in the result of said case.

This, the 13th day of June 2006.

MICHELLE J. FULLER, CCR-B-1991
Certified Court Reporter

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